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Federal Communications Commission
Office of Secretary

June 7, 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of
Microwave Relocation-- WT Docket No. 95-157

Dear Mr. Caton:

The National Rural Electric Cooperative Association (NRECA) hereby submits reply comments regarding the Federal Communications Commission's Further Notice of Proposed Rulemaking, (FNPRM) FCC 95-196 issued April 24, 1996 and released April 30, 1996.

Enclosed are an original plus nine copies of NRECA's reply comments. Please provide a personal copy to each of the Commissioners.

Sincerely,

Ronald K. Greenhalgh
Chief Engineer

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Amendment to the Commission's Rules) WT Docket No. 95-157
Regarding a Plan for Sharing) RM-8643
the Costs of Microwave Relocation)

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Federal Communications Commission
Office of Secretary

To: The Commission

**REPLY COMMENTS OF THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

Pursuant to Section 1.415 and 1.419 of the Federal Communication Commission's (FCC) Rules, the National Rural Electric Cooperative Association (NRECA) hereby submits its reply comments on the Further Notice of Proposed Rulemaking, (FNPRM) FCC 95-196 issued April 24, 1996 and released April 30, 1996, in the above-captioned proceeding in which the FCC seeks comment on whether to shorten the voluntary negotiation period and lengthen the mandatory negotiation period for the D, E, and F blocks; whether the negotiation periods for the C block should be subject to the same adjustment; and proposes that microwave incumbents be permitted to relocate some of their own links and obtain reimbursement rights pursuant to the cost-sharing plan adopted in the *First Report and Order* (RM-8643 issued 4/26/96 and released 4/30/96).

I. Introduction

The National Rural Electric Cooperative Association (NRECA) is the national association of more than 1,000 consumer-owned rural electric generation & transmission and distribution systems which supply central station electricity to more than 30 million people in the rural areas of 2600 counties in 46 states. Rural electric cooperatives serve some 75% of the land area and operate about half of all of the miles of electric lines in the United States, providing services to the farthest reaches of our nation. Rural electric systems average 5 consumers per mile of line, compared with an average of 35 consumers per mile of line for other utilities.

The frequencies assigned to electric utilities in the 1850-2200 MHZ band are used for the essential purposes of monitoring and controlling the flow of electric power, communicating in times of natural disaster, and detecting, isolating and solving problems before they result in a major disruption of electric service. The following NRECA member systems have existing frequency assignments in that band. Some of the member systems listed below have successfully negotiated relocation agreements with PCS auction winners, others are in the process of negotiation with PCS auction winners, and still others have not been contacted by winners of the

auctions of the A, B or C blocks of spectrum in the 2GHz band.

Alabama Electric Cooperative, Inc.
Altamaha Electric Membership Corp.
Arizona Electric Power Cooperative, Inc.
Basin Electric Power Cooperative
Berkeley Electric Cooperative, Inc.
Big Rivers Electric Corporation
Blue Ridge Electric Cooperative, Inc.
Blue Ridge Membership Corporation
Blue Bonnet Electric Cooperative
Brazos Electric Power Cooperative, Inc.
Cajun Electric Power Cooperative, Inc.
Carroll Electric Cooperative Corp.
Central Electric Power Cooperative
Central Iowa Power Cooperative
Chugach Electric Association, Inc.
Colquitt Electric Membership Corporation
Cooperative Power Association
Corn Belt Power Cooperative
Cuivre River Electric Cooperative, Inc.
Cumberland Electric Membership Corp.
Dairyland Power Cooperative
Deseret Generation & Transmission Cooperative
Dixie Electric Membership Corporation
East Central Electric Association
East Kentucky Power Cooperative, Inc.
East River Electric Power Cooperative, Inc.
Empire Electric Association, Inc.
Federated Rural Electric Association
Flint Electric Membership Corp.
Four County Electric Membership Corp.
Gibson County Electric Membership Corp.
Golden Valley Electric Association, Inc.
Green River Electric Corporation
Guadalupe Valley Electric Cooperative
Hart County Electric Membership Corp.
Henderson-Union Rural Electric Cooperative Corp.
Hoosier Energy Rural Electric Cooperative, Inc.
Intermountain Rural Electric Association
Jackson Electric Membership Corp.
Jasper Newton Electric Cooperative, Inc.
Jefferson Electric Membership Corp.

Johnson County Electric Cooperative Association
KAMO Electric Cooperative, Inc.
Lake Region Electric Cooperative, Inc.
Lea County Electric Cooperative, Inc.
Lower Colorado River Authority
Medina Electric Cooperative, Inc.
Minnkota Power Cooperative, Inc.
Mitchell Electric Membership Corporation
Moon Lake Electric Association, Inc.
Navopache Electric Cooperative, Inc.
North Arkansas Electric Cooperative, Inc.
North Georgia Electric Membership Corp.
Northwest Electric Power Cooperative, Inc.
Northwest Iowa Power Cooperative
Owen County Rural Electric Cooperative Corp.
Palmetto Electric Cooperative, Inc.
Petit Jean Electric Cooperative Corp.
Plains Electric Generation & Transmission Cooperative, Inc.
Platte Clay Electric Cooperative, Inc.
Plumas Sierra Rural Electric Cooperative
Rappahannock Electric Cooperative
Rayle Electric Membership Corporation
Runestone Electric Association
Rushmore Electric Power Cooperative
Sam Houston Electric Cooperative, Inc.
San Bernard Electric Cooperative, Inc.
Satilla Rural Electric Membership Corp.
Sho-Me Power Corporation
South Mississippi Electric Power Association
South Texas Electric Cooperative
Southern Illinois Power Cooperative
Southern Maryland Electric Cooperative, Inc.
Southside Electric Cooperative
Southwest Tennessee Electric Membership Corp.
Sumter Electric Cooperative, Inc.
Sunflower Electric Cooperative, Inc.
Talquin Electric Cooperative, Inc.
Tri State Generation and Transmission Association, Inc.
Union Rural Electric Cooperative, Inc.
United Power Association
Valley Electric Association, Inc.
Warren Rural Electric Cooperative Corp.
Western Farmers Electric Cooperative

Each of these NRECA member systems will suffer hardships, in varying amounts, if they are forced to move, without compensation, from this band to less reliable media. The lost spectrum would have to be replaced because operating electrical transmission and distribution systems at reduced reliability is not an option. Reduced reliability from other data and voice transmission media or leased circuits, lack of suitable frequencies in other private microwave bands, and the expense involved in replacing microwave systems with fiber optic systems or switching to higher frequency bands (where feasible), would all contribute to those hardships. The high costs are largely attributable to the fact that NRECA's member systems operate in sparsely populated areas and their facilities are widely dispersed. Common carrier services that are reliable enough for electric utility operations generally do not exist in these areas, so they would have to be constructed. Substituting fiber optic circuits for the existing frequencies in the 1850-2200 MHz band is unreasonably expensive and impractical. Hundreds of miles of redundant fiber optic installations would be required to provide the reliability necessary for electric utility operations.

II. NRECA Comments

A. The Existing Framework for Relocation is a Thorough Balancing of Interests and Should Not Be Modified

The Commission is to be commended for a careful balancing of interests, both in the establishment of the 2GHz transition rules (ET Docket No. 92-9) and in the First Report and Order and FNPRM referenced above.. The Commission's rules for transition ensure that PCS is deployed as quickly as is economically and technically feasible, and that incumbents in the band are equitably compensated for relocating without damage to the system reliability so vital to electric utilities and other incumbents. The Commission's efforts have resulted in a balance of incentives and penalties for both the incumbents and the new occupants of the band of spectrum in question.

NRECA opposes changing the existing framework of a two-year voluntary/one-year mandatory negotiation period for the following reasons:

1. With regard to the C block of spectrum, the auctions have already been conducted under the current rules. Therefore, both incumbents and auction winners know the rules under which relocation will occur. Also, the Commission has already issued notice that the voluntary period began on May 22, 1996. It would be unfair to both parties to change the rules under which licenses were awarded at auction. NRECA particularly objects to any proposal to modify the relocation rules for incumbents affected by the C block licensees.

2. With regard to the D, E and F blocks of spectrum, there is no demonstrated need to change the current rules. As Commissioner Quello acknowledged in his "Separate Statement" to the recent First Report and Order and FNPRM, the inherent flexibility of the relocation rules "can be the source of some difficulties. That is always the situation when the

Commission correctly decides to rely on negotiations between the parties rather than the heavy-handed government intrusion into what should be private contractual matters.”

3. NRECA agrees with UTC’s conclusion that over half of the respondents to a survey of microwave incumbents have not been contacted regarding at least some of their microwave links in the A and B blocks. It appears that considerations other than relocation of incumbents have occupied A and B block licensees in the first year of the relocation period. While NRECA fully expects the number of negotiations to increase for relocation of incumbent systems in the A and B blocks, we have no reason to believe that the microwave transition process for subsequent blocks not already relocated under the new cost-sharing rules will pursue a different course.

4. As incumbents move out of the band due to full-system relocation afforded by the Commission’s cost-sharing rules, subsequent PCS licensees will not be negotiating with current incumbents. Rather, they will be complying with the formula set out in the First Report and Order and FNPRM. Therefore, the need for relocation negotiations should diminish somewhat, thus requiring no changes in the current rules.

5. Chairman Hundt recommended caution when considering whether to change the relocation rules, noting in his “Statement” on the First Report and Order and FNPRM:

In considering whether to shorten the period for voluntary negotiations, for the C, D, E and F blocks, we should be mindful of the fact that the 2GHz fixed microwave bands support communications of the incumbent police, fire and emergency medical licensees, as well as public utilities and others that provide essential services to the public. It is critical that these licensees be able to rely on established rules and that the relocation process not cause disruption or harm to their communications services.

NRECA believes that the same caution expressed by the Chairman should be exercised by not modifying the relocation negotiation periods for microwave transition.

B. If the Commission’s Recommendation is Accepted, the “Time Clock” on Negotiations Should Not Begin Upon Completion of an Auction

The current relocation rules specify a three-year time period for negotiations (5 years for public safety licensees), with the first two years considered as “voluntary,” during which incumbents are not required to negotiate and the final year as “mandatory,” during which incumbents are required to negotiate. The voluntary periods commenced on May 22, 1996, with the issuance of notice by the Commission. However, and of great importance to rural incumbents, the mandatory period does not begin until a PCS licensee notifies an incumbent of the PCS

licensee's intent to begin negotiations.

This "floating time clock" would preserve the Commission's balance specifically where PCS will not roll out immediately, such as rural areas. The commencement of the one-year mandatory period upon notification by a PCS licensee ensures that rural incumbents are guaranteed an opportunity to negotiate, even though the voluntary period may have expired. It also ensures that PCS licensees are provided with a negotiation period in geographical areas that are not the first priority of their individual business plans. Neither the incumbents nor the PCS licensees are put in a "take it or leave it" position when dealing with the questions surrounding relocation of microwave facilities.

Should the Commission decide to adjust the voluntary/mandatory time periods within the three-year window, NRECA suggests that the proposed one-year voluntary period operate on a floating basis, just as the mandatory period currently operates. Specifically, the voluntary period would not commence until a PCS licensee provides notice of intent to negotiate (possibly an initial good-faith offer) to an incumbent licensee. The voluntary period would continue to be voluntary; that is, the incumbent would not be required to negotiate. The voluntary period would then expire at the close of one year after its commencement. The proposed two-year mandatory period would not commence until a good faith offer is proffered or renewed by the PCS licensee after the expiration of the one-year voluntary period. The incumbent would be required to negotiate during the two-year mandatory period. All other current rules would apply.

Such a scheme would protect the interests of incumbents and future PCS licensees. The winners of auctions of PCS licenses in the D, E and F blocks would have the time and opportunity to become educated about the importance of system reliability to current incumbents, like rural electric cooperatives, and their core businesses. Future PCS auction winners would also have the flexibility to enter relocations in a market when they are ready to do so, rather than being pushed by government fiat. Incumbents would benefit by entering negotiations when PCS auction winners are ready to do so, thus allowing incumbents, especially smaller entities, to budget carefully for studies, analysis, staffing and other needs concomitant with relocation.

Such budgetary planning flexibility should not be taken lightly by the Commission. Smaller entities that own microwave systems often do not have large legal or engineering staffs from whom to draw experts to assist with microwave relocation. They must retain temporary outside assistance to deal with such a project. These considerations are especially true of many rural electric cooperatives. Such electric systems operate on an at-cost basis and are fully accountable to their members-owners for all of the costs of providing safe, reliable electric service. Expenditure of money on outside consultants prematurely does not sit well with the owners of rural electric cooperatives: the very people who purchase electric service from the cooperatives.

C. Incumbents Should be Permitted to Participate in the Cost-Sharing Plan

As originally proposed, only PCS licensees would be eligible for participation in the cost-sharing

plan. However, other commentors pointed out in the proceeding which resulted in the First Report and Order, incumbent participation in cost-sharing would promote the Commission's stated goals of facilitating the deployment of PCS and encouraging the relocation of microwave systems. NRECA supports the expansion of the cost-sharing plan to permit participation by incumbents. As noted in UTC's reply comments to the NPRM:

By permitting incumbents to participate in cost-sharing, the FCC will not only encourage the relocation of incumbent systems in the most efficient and least disruptive manner, but will also speed up the deployment of PCS. PCS licensees subject to cost-sharing with incumbents will not face lengthy negotiations over comparable facilities or the installation or testing thereof. Relocation costs will be known and once an agreement is reached, the PCS licensee can immediately begin operations.

For incumbents in rural areas, where PCS deployment is uncertain, incumbent participation will permit incumbents to plan and construct new systems earlier in the process and to gain access to frequencies that may not be available when PCS licensee to desire to deploy in their areas. For incumbents which are unable to negotiate whole-system changeouts from initial PCS licensee, expansion of the cost-sharing rules would permit them to relocate entire systems at once, thereby minimizing engineering and construction costs and the risk to the reliability of their systems that is attendant in piecemeal replacements. Of course in both these scenarios, the PCS licensees will benefit by gaining access to the incumbent's spectrum in an expedited manner, without having to negotiate over the details of the relocation or having to wait for an incumbent to construct replacement facilities.

The implementation of incumbent participation in cost-sharing should pose no practical problems. The Commission has done a commendable job of delineating the rights and responsibilities of participants. These rights and responsibilities are easily transferable to participating incumbents. In particular, participating incumbents would be required to notify the cost-sharing administrator regarding links for which reimbursement is sought. The incumbent would be required to maintain documents supporting the relocation costs and would be subject to the caps imposed on cost-sharing reimbursement. Reimbursement should be permitted on a pro rata basis from each PCS licensee which benefits from the relocation, as determined by the Proximity Threshold test. Pursuant to the cost-sharing plan, incumbents would be entitled to reimbursement for up to 100 percent of the relocation cost because it would be considered a relocation outside the relocater's frequency block. Similarly, under the cost-sharing rules, the cost-sharing obligation would not be depreciated.

One issue that must be addressed with regard to incumbent participation in the cost-sharing plan is how to provide an incentive of an incumbent to minimize relocation costs to ensure that PCS licensees are not required to pay more if an incumbent relocated itself than if the incumbent was relocated by another PCS licensee. Several characteristics of the relocation process mitigate

against overcharging by incumbents. First, participating incumbents are not guaranteed to receive any reimbursement for the relocation of a link unless and until a subsequent PCS licensee's deployment would have required the relocation. While there may be other reasons for an incumbent to relocate its own system, incumbents take a risk in participating in cost-sharing, and are unlikely to increase this risk by increasing relocation costs. Even if the incumbent eventually receives compensation for some links, it might not be reimbursed for all links and will end up bearing any remaining costs. Second, pursuant to the cost-sharing rules, incumbents would be required to retain records accounting for the relocation costs; all costs are therefore verifiable by the PCS licensees. The cost-sharing rules also specify reimbursable and non-reimbursable costs. By examining the supporting documentation, PCS licensees can ensure that they are reimbursing only for appropriate costs. Third, the cost-sharing rules impose caps on reimbursement expenditures that will serve to limit the PCS licensees' reimbursement obligations and to clearly define the incumbents' upper limit for relocation costs.

As an additional safeguard, NRECA recommends that, for incumbents that have already had one or more links relocated by a PCS licensee, a rebuttable presumption should be established that an amount expended for self-relocating a link is reasonable if it does not exceed the lesser of : (1) the cost-sharing cap; or (2) the average relocation cost for the PCS-relocated links. Under this proposal, relocation terms that are subject to arms-length negotiations can be used as a benchmark for assessing the reasonableness of costs incurred by the incumbent for self-relocation.

The Commission also seeks comment on whether a large number of incumbents would avail themselves of the option of participating in the cost-sharing plan given that the Commission's rules require PCS licensees to pay the entire cost of relocating incumbents to comparable facilities. NRECA believes that numerous incumbents, including some rural electric cooperatives, would avail themselves of the opportunity to participate in the cost-sharing plan if permitted. Many incumbents, especially in rural areas, are faced with situation where some or all of their links may not be relocated by PCS licensees during the initial stage of PCS deployment (primarily the A and B blocks of auctioned licenses). Incumbent participation in cost-sharing will permit these incumbents to relocate links themselves in order to reduce costs, minimize disruption to their microwave systems and obtain needed replacement frequencies and/or facilities.

Finally the Commission seeks comment on whether incumbents should be treated as the initial relocater for the purposes of applying the cost-sharing formula. The cost-sharing formula must be applied equitably to both PCS and incumbent participants. Therefore, incumbents can and should be treated as an initial relocater subject to the rules for the relocation of the links entirely outside the relocater's frequency block. These rules specify that such relocations are not subject to depreciation under the cost-sharing formula. As with PCS relocators that relocate links outside their licensed territory or frequency block, incumbent participants do not gain an advantage from the relocation vis-a-vis subsequent PCS licensees, and therefore need not have their reimbursement obligations depreciated to account for this advantage. Furthermore, because

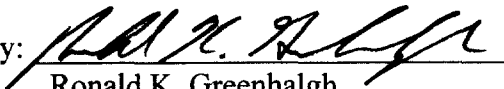
the timing of the incumbent's self-relocation has no effect on creation of the reimbursement obligation under the Proximity Threshold test, there is no reason to depreciate the PCS licensee's reimbursement obligation.

III. Conclusion

NRECA strongly opposes the Commission's proposal to modify the relocation framework for the C, D, E or F block licensees to change the lengths of the voluntary and mandatory negotiation periods. This modification is not necessary to facilitate the deployment of PCS. Contrary to the allegations of the PCS industry, the current framework is effectively promoting negotiations and relocation agreement. Should the Commission decide to modify the voluntary and mandatory periods, NRECA asks the Commission to implement a "floating time clock" for the amended voluntary period. Such a procedure would be similar to the current rules regarding commencement of the mandatory period. NRECA supports the Commission's proposal to permit incumbents to participate in the cost-sharing plan. Incumbent participation can be easily accommodated by the current cost-sharing rules and will promote both microwave relocations and PCS deployment.

Respectfully submitted,

NATIONAL RURAL ELECTRIC
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